IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 140/2006
(Jagdish Vs. Smt. Jetu)

Date of Order : 27/10/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Ms. Shanta Ojha for the petitioner.
None present for the non-petitioner.

BY THE COURT:-

By the instant petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 9.12.2005 passed by Judicial Magistrate, Ist Class, Bhilwara (for short 'the trial court' hereinafter) whereby during the pendency of the application filed by the non-petitioner under Section 125 Cr.P.C., the trial court granted monthly allowance of interim maintenance @ Rs. 500/- in favour of non-petitioner.

It is contended by learned counsel for the petitioner that the parties have compromised the matter by an agreement and in the agreement the parties have decided not to file any case against each other. Despite such an agreement, the non-petitioner has filed application seeking maintenance under Section 125 Cr.P.C.

I have carefully gone through the order impugned. It

appears that the petitioner has not disputed that the non-petitioner is his legally wedded wife. However, subsequently, the non-petitioner filed a petition under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage which has been allowed and a decree of dissolution of marriage has been passed by the learned District Judge, Bhilwara. Be that as it may, from the order impugned, it is clear that even after dissolution of marriage, the non-petitioner has not contacted re-marriage and therefore, in my view, the non-petitioner is entitled for the maintenance. So far as the agreement between the parties is concerned, it is a question of evidence and parties are yet to lead evidence and therefore, it cannot be concluded at the interim stage that by an agreement the non-petitioner has waived her right to get maintenance. In the circumstances, therefore, no case for interference in the inherent jurisdiction is made out.

The petition has no force and it is, therefore, dismissed. Stay petition also stands dismissed. However, the trial court is directed to decide the main application filed by the non-petitioner utmost expeditiously preferably within a period of four months from the date of receipt of copy of this order.

(H.R.PANWAR),J.

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